

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHEN W. BARTON,

Plaintiff,

v.

JOE DELFGAUW et al.,

Defendants.

CASE NO. 3:21-cv-05610-DGE

ORDER DENYING MOTION TO
ALLOW ADVISORY COUNSEL

Presently before the Court is a motion by pro se litigant Nathen Barton to allow attorney Peter Schneider to act as “advisory counsel” in his case.¹ (Dkt. No. 283.) Barton requests to proceed pro se while also allowing Schneider to participate in court proceedings. (*Id.*) Specifically, Barton asks the Court to permit Schneider to sit with him “during any court proceedings” and “make legal arguments, question witnesses, or make objections on Barton’s

¹ Barton has filed identical motions in two other cases presently before the Court. *See Barton v. The Rian Group Inc et al*, 3:23-cv-05452-DGE (Dkt. No. 22.); *Barton v. Walmart Inc et al*, 3:23-cv-05063-DGE (Dkt. No. 24.)

1 behalf as needed.” (*Id.*) Barton relies on Washington Rule of Professional Conduct 1.2(c) to
2 support his request.

3 Rule 1.2(c) states, “A lawyer may limit the scope of the representation if the limitation is
4 reasonable under the circumstances and the client gives informed consent.” “Although this Rule
5 affords the lawyer and client substantial latitude to limit the representation, the limitation must
6 be *reasonable under the circumstances*. Comment 7, Wash. R. Prof. C. 1.2(c).

7 The Court finds Barton’s request is not reasonable under the circumstances because it
8 fails to limit either the scope or subject matter of Schneider’s representation. Barton’s broad
9 request leaves the subject matter of the representation open-ended. Barton is not simply asking
10 for “general information” about the law or requesting assistance for a “common and typically
11 uncomplicated legal problem.” *See* Comment 7, Wash. R. Prof. C. 1.2(c). Barton’s request
12 requires legal skill and knowledge beyond what would typically be expected in a limited
13 representation agreement.

14 Barton’s request, rather than being limited and specific, seeks to have Schneider perform
15 many of the tasks an attorney would typically take on during a trial. The broad nature of his
16 request—encapsulated in terms like “any” or “as needed”—implies Barton may seek to expand
17 the scope of Schneider’s responsibilities.² Barton’s request to proceed pro se while
18 simultaneously being represented by counsel distorts the intended concept of limited
19 representation and renders his request unreasonable.

20 In addition, Local Civil Rule 83.2(b)(5) provides that a party can *either* represent
21 themselves *or* be represented by counsel, but not both: “When a party is represented by an
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23 ² It also is unclear the extent to which the lawyer might be subject to a legal malpractice claim in
24 the event Barton is not satisfied with the lawyer’s “limited” representation.

1 attorney of record in a case, the party cannot appear or act on his or her own behalf in that case.”
2 Moreover, if the party seeks to proceed pro se, the rule requires an order of substitution to be
3 granted by the court, which would *terminate* the party’s attorney as counsel and *substitute* the
4 party to proceed pro se. (*Id.*)

5 Case law has also established that a party is not entitled to “hybrid” representation. *See*
6 *Brasier v. Jeary*, 256 F.2d 474, 477 (8th Cir. 1958) (holding there was no constitutional or other
7 right for a litigant to conduct his own case pro se and have the aid of counsel to speak and argue
8 for him at the same time); *see also Iannaccone v. L.*, 142 F.3d 553, 558 (2d Cir. 1998) (same).
9 There are also ethical and procedural concerns with permitting the type of hybrid representation
10 envisioned by Plaintiff. *See, e.g., Landers v. State*, 550 S.W.2d 272, 280 (Tex. Crim. App. 1977)
11 (questioning whether the attorney’s or the party’s opinion would control in a hybrid
12 representation when there was disagreement on a tactical matter).

13 Accordingly, the Court, DENIES Plaintiff’s motion to allow for advisory counsel. (Dkt.
14 No. 283.)

15 Dated this 14th day of July, 2023.

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David G. Estudillo
United States District Judge